

## LABOUR DEPARTMENT

The 2nd December, 1986

**No. 9/786-6Lab./9521.**—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s General Manager, Haryana Agro Foods and Fruits Processing Plant, Murthal (Sonepat).

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 120 of 1984

Between

SHRI SATISH CHANDER, WORKMAN AND THE MANAGEMENT OF M/S GENERAL MANAGER, HARYANA AGRO FOODS AND FRUITS PROCESSING PLANT, MURTHAL (SONEPAT)

Shri S.N. Solanki, A.R. for the workman.  
Shri S. Kaushal, A.R. for the management.

## AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the workman Shri Satish Chander and the management of M/s General Manager, Haryana Agro Foods and Fruits Processing Plant, Murthal (Sonepat), to this Court, for adjudication,—*vide* Haryana Government Gazette Notification No. 26396-401, dated 26th July, 1984:—

Whether the termination of services of Shri Satish Chander is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Salesman since 7th November, 1979, on monthly wages of Rs. 434 and was performing the duties of a Sales Representative of the respondent company and that M/s Haryana Agro Foods and Fruits Processing Plant, Murthal, is one of the constituent of Haryana Agro Industries Corporation Ltd., Chandigarh, which is an apex body headed by a Managing Director, who, *vide* his order dated 3rd January, 1983, directed for the termination of services of the petitioner and in compliance to the same order of termination dated 8th January, 1983, was passed, which is illegal, unjustified, because employees junior to the petitioner are still working in the respondent corporation and as such, provisions of section 25C of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act), has been violated in terminating the services of the petitioner.

3. In the reply filed by the respondent, preliminary objections taken are that the reference is bad in law and that the present dispute is not adjudicable by this Court being a case of retrenchment within the jurisdiction of Industrial Tribunal and that since the petitioner was employed as Sales Representative, he is not a "workman" as defined in section 2S of the said Act. On merits, it is alleged that the petitioner was employed as a Salesman on daily wages of Rs. 14 by the General Manager of the respondent plant at Murthal and not by the Managing Director, Haryana Agro Industries Corporation, Chandigarh and that since the petitioner was junior most Salesman, so his services were dispensed with as a measure of economy. It is further alleged that since the petitioner was employed at Murthal plant, his seniority qua employees of other constituent of the respondent Corporation cannot be taken into consideration. So, he has prayed for dismissal of the reference.

4. On the pleadings of the parties, the following issues were framed on 7th May, 1985 :

- (1) Whether the applicant is a "workman" as defined in section 2S of the I.D. Act, 1947? OPA
- (2) Whether the reference is bad in law? OPM
- (3) As per reference. OPA.

5. The petitioner in support of his case appeared as WW-1 and the respondent examined MW-1 Shri R.P. Aggarwal, Assistant Secretary, MW-2 Shri P.K. Sexena, General Manager at Murthal.

6. The learned authorised representatives of the parties heard. My findings on the issues framed are as below :—

## Issue No. 1:

7. Employment of the petitioner as Sales Representative/Salesman is not denied by the respondent. The question as to whether employee is a workman or not, is not a pure finding of fact. It is a mixed question

of law and facts. In arising at a conclusion, the Labour Court has to first address itself to the various duties assigned to the employee and then draw a conclusion as to whether, in the light of the duties assigned, an employee would be a "workman" within the meaning of section 2(s) of the said Act or not. Nomenclature of the employee is no criteria to hold that he is not a "workman". Unfortunately, in the present case, there is not a iota of evidence on the file about the duties assigned or were being performed by the petitioner during the course of his employment. So, this Court is struck at the blind alley in the absence of any evidence. Simply because the petitioner was employed as a Salesman, it will be difficult to hold that he is not a "workman", because in 1981 (14) Labour & Industrial Cases 893 between the Management of M/s Bharat Kala Kendra Private Ltd. and R.K. Baweja and others. In the authority under reference, the petitioner was employed as a Salesman in a Showroom of the respondent and his duties were to display goods to the customers and did not entail any canvassing or promotion of sales of goods. Otherwise in *Burmah Shell Oil Storage Distribution Company of India Ltd., and the Management of M/s Burmah Shell Staff Association and others*, it was held by the Hon'ble Supreme Court of India that an employee engaged in canvassing sale of an industry would not be a "workman" and the work for which he is employed is not covered by the four categories mentioned in the definition of the expression "workman". The law is also settled that the Industrial Disputes Act is a social welfare legislation and the words occurring in such a legislation involving human rights are not to be put in procrustean bed or shrunk to lilliputian dimensions. As is evident from the name of the respondent plant at Murthal, it must be engaged in the manufacture of food products with having sale outlets in many parts of the country. So, in the absence of any evidence, it is difficult to hold that the petitioner was engaged in canvassing or promotion of sale of goods in the respondent Company and as such, he cannot be taken out of the purview of the expression "workman" as defined in section 2(s) of the said Act and as such, this issue is answered in favour of the workman.

#### Issue No. 2:

8. Since it was an individual case of retrenchment the jurisdiction of the Labour Court is not ousted to decide the controversy in hand.

#### Issue No. 3 :

9. On behalf of the respondent it was vehemently argued that the petitioner was employed on daily wages which fact is not denied by him also and that since the respondent was incurring huge losses, retrenchment of the workman was fully justified. Initially, the stand of the respondent was that four Plants at Murthal, Jind, Shahbad and Kaithal fall under the overall control of the respondent/Corporation are functioning in the State of Haryana and that employees of the common cadre could be transferred from one Plant to the other and that these employees who are transferable are appointed by the head office and that employees who are not in the common cadre are employed at a local level by the General Manager concerned and that the post of such employees are not transferable and that recruitment at the local level is made at per load work in the concerned plant and that since the petitioner was never employed by the head office, so, he was an employee of the plant at Murthal. It may be possible that the petitioner was employed by the head of the plant at Murthal, but his service were sacked on receipt of a communication from the respondent/Corporation, copy of the letter is Ex. W-1. In the said letter it is not even mentioned that these employees were being shown the door on the ground of economy. It is simply mentioned therein that these employees working on daily wages/*ad hoc* basis be paid off immediately and compliance report by 10th January, 1983. It terms of this fail the General Manager of the Murthal Plant terminated the services of the petitioner,—*vide* his order, dated 8th January, 1983, though he ordered for payment of one month's pay in lieu of notice period and retrenchment compensation as envisaged under section 25F of the said Act. On behalf of the respondent reliance has been placed upon Ex. MW-2/1, a photo copy of the payment voucher. The same is dated 18th June, 1983. The learned authorised representative of the respondent has not been able to satisfy this Court as to how this payment, if at all, made to the petitioner could satisfy the requirement of section 25F of the said Act. MW-1 Shri R.P. Aggarwal also admitted that one Shyam Sunder, Salesman, employed at the Gurgaon Centre of the respondent/Corporation is junior to the petitioner in length of service. If the services of the petitioner could be terminated by the local office how is it that a directive was sent in that behalf by the head office to the unit at Murthal to terminate the services of the petitioner. So, termination of services of the petitioner was violative of the provisions of section 25F of the said Act and that the order of termination cannot be sustained being unlawful and unjustified. The same is set aside. Since the demand notice was raised by the petitioner within one month of termination of his services, he cannot be denied the benefits of back wages. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

The 15th September, 1986.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Bhiwani.

Endst. No. 120-84/1434, dated 6th October, 1986.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Bhiwani.